

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTHONY STORY,
Defendant.

3:20-CR-30088-RAL

FINAL JURY INSTRUCTIONS

INSTRUCTION NO. 1

Members of the jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions. The instructions I am about to give you now are in writing and will be available to you in the jury room.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important.

All instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NO. 2

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NO. 3

I have mentioned the word “evidence.” The “evidence” in this case consists of the testimony of witnesses, the documents and other things received as exhibits, and the facts that have been stipulated—that is, formally agreed to by the parties.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by lawyers representing the parties in the case are not evidence.
2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.
3. Anything you saw or heard about this case outside the courtroom is not evidence.

INSTRUCTION NO. 4

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony of any witness to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 5

The indictment in this case charges the defendant with possession of a controlled substance with intent to distribute. The defendant has pleaded not guilty to this charge.

The indictment is simply the document that formally charges the defendant with the crime for which he is on trial. The indictment is not evidence of anything. At the beginning of the trial, I instructed you that you must presume the defendant to be innocent. Thus, the defendant began the trial with a clean slate, with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty. This presumption can be overcome only if the United States proved during the trial, beyond a reasonable doubt, each element of the crime charged.

Please remember that only the defendant, not anyone else, is on trial here, and that the defendant is on trial only for the crime charged, not for anything else.

There is no burden upon a defendant to prove that he is innocent. Instead, the burden of proof remains on the United States throughout the trial. Accordingly, the fact that the defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NO. 6

The crime of possession of methamphetamine with the intent to distribute, as charged in the indictment, has three elements, which are:

***One*, on or about the 14th day of August, 2019, the defendant was in possession of methamphetamine;**

***Two*, the defendant knew that he was in possession of methamphetamine; and**

***Three*, the defendant intended to distribute some or all of the methamphetamine to another person or persons.**

If you find unanimously that the government has proved these three elements beyond a reasonable doubt as to the defendant, then you must find the defendant guilty of this crime. Otherwise, you must find the defendant not guilty of this offense.

INSTRUCTION NO. 7

If your verdict on the offense charged in the indictment is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on the offense charged in the indictment, you should record that decision on the verdict form and go on to consider whether the defendant is guilty of the crime of simple possession of a controlled substance under this instruction. The crime of simple possession of a controlled substance, a lesser included offense to the offense as it is charged in the indictment, has two elements, which are:

***One*, on or about the 14th day of August, 2019, the defendant was in possession of methamphetamine; and**

***Two*, the defendant knew that he was in possession of methamphetamine.**

For you to find the defendant guilty of this crime, a lesser included offense to the offense charged in the indictment, the government must prove both elements beyond a reasonable doubt; otherwise you must find the defendant not guilty of this crime.

INSTRUCTION NO. 8

The law recognizes several kinds of possession. A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Whenever the word “possession” has been used in these instructions, it includes actual as well as constructive possession and also sole as well as joint possession.

INSTRUCTION NO. 9

“Intent” and “knowledge” are elements of the offense charged in this case and must be proven beyond a reasonable doubt. The government is not required to prove a defendant knew that his acts or omissions were unlawful. An act is done “knowingly” if a person realizes what he is doing and does not act through ignorance, mistake, or accident. You may consider the evidence of a defendant’s words, acts, or omissions, along with all other evidence, in deciding whether the defendant acted knowingly.

Intent or knowledge may be proved like anything else. You may consider any statements made and acts done by the defendant in connection with the offense charged. You may also consider all the facts and circumstances in evidence which may aid in a determination of the defendant’s knowledge or intent.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 10

You have heard testimony that the defendant, Anthony Story, made a statement to law enforcement. It is for you to decide:

First, whether the defendant, Anthony Story, made the statement.

Second, if so, how much weight you should give it.

In making these two decisions, you should consider all of the evidence, including the circumstances under which the statement may have been made.

INSTRUCTION NO. 11

You have heard testimony from a witness who entered into a plea agreement with the government. Such testimony was received in evidence and may be considered by you. You may give this testimony such weight as you think it deserves. Whether or not this testimony may have been influenced by any plea agreement or the government's promises is for you to decide.

Any witness's guilty plea or conviction of a crime cannot be considered by you as any evidence of this defendant's guilt. The witness's guilty plea or conviction can be considered by you only for the purpose of determining how much, if at all, to rely upon the witness's testimony.

INSTRUCTION NO. 12

You have heard evidence from a witness who hopes to receive a reduced sentence on certain criminal charges in return for cooperation with the government in this case. If the United States Attorney's Office decides that a witness convicted of a federal offense who entered into a cooperation agreement provided substantial assistance through what the United States Attorney believes was truthful testimony, then the United States Attorney may bring what is called a Rule 35 Motion for the sentencing Court to reduce the sentence. If such a motion is filed, the sentencing Court then decides whether to reduce the sentence or not and how much to reduce the sentence.

You may give the testimony of the witness such weight as you think it deserves. Whether or not the testimony may have been influenced by the hope of receiving a reduced sentence is for you to determine.

INSTRUCTION NO. 13

You have heard testimony from individuals described as experts. Persons who, by knowledge, skill, training, education, or experience, have become an expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NO. 14

The indictment charges that the offense was committed on or about the 14th day of August, 2019. It is enough for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the indictment. It is not necessary for the government to prove that the offense was committed precisely on the date charged.

INSTRUCTION NO. 15

Reasonable doubt is doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 16

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the United States has proved its case beyond a reasonable doubt.

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Fifth, during your deliberations, you must not communicate with or provide any information to anyone other than by note to me by any means about this case. You may not use any electronic device or media, such as a telephone, cell phone, smart phone, iPhone, Blackberry, or computer; the internet, any internet service, or any text or instant messaging service; or any internet chat room, blog, or website such as Facebook, Snapchat, Instagram, YouTube, or Twitter, to communicate to anyone information about this case or to conduct any research about this case until I accept your verdict.

Sixth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. ANTHONY STORY, Defendant.	3:20-CR-30088-RAL VERDICT FORM
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We, the jury, duly empaneled and sworn to try the issues in this case, find as follows:

1. We find Defendant Anthony Story _____ (fill in either “guilty” or “not guilty”) of the crime of possession of a controlled substance with intent to distribute on or about August 14, 2019, as charged in the indictment.

[Skip if you find the defendant “guilty” in part 1 above.] If you find that the defendant is “not guilty” of possession of a controlled substance with the intent to distribute on or about August 14, 2019, as charged in the indictment, or if you are unable to reach a verdict after all reasonable efforts, then you must answer the following:

- a. We find Defendant Anthony Story _____ (fill in either “guilty” or “not guilty”) of the crime of simple possession of a controlled substance on or about August 14, 2019 under Instruction No. 7.

Dated May ____, 2021

Foreperson